

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REBECCA FAUST,

Plaintiff,

v.

JAY INSLEE, Governor of the State of
Washington; CHRIS LIU, Director of
Enterprise Services,

Defendants.

CASE NO. C20-5356 BHS

ORDER DENYING PLAINTIFF'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER

This matter comes before the Court on Plaintiff Rebecca Faust's ("Faust") motion for temporary restraining order ("TRO"). Dkt. 10. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL AND FACTUAL BACKGROUND

On April 28, 2020, the Court granted Faust's motion to proceed *in forma pauperis* and accepted Faust's civil rights complaint against Defendants Jay Inslee, Governor of the State of Washington ("Governor Inslee") and Chris Liu, Director of Enterprise Services ("Liu") (collectively "Defendants"). Dkt. 3. Faust alleges that on April 6, 2020,

1 she submitted a permit request to the Department of Enterprise Services (“DES”) to hold
2 a rally on the State Capital grounds on May 1, 2020. *Id.* at 3. On April 7, 2020, a DES
3 employee emailed Faust rejecting her permit request because DES has cancelled all
4 permitted events to slow the spread of COVID-19 and to comply with Governor’s
5 Inslee’s directives. Dkt. 3-6 at 1. Faust immediately appealed. Dkt. 3 at 5. On April 11,
6 2020, Liu denied Faust’s appeal citing Governor Inslee’s “Stay Home, Stay Healthy”
7 proclamation, which banned all gatherings until at least May 4, 2020. Dkt. 3-9. Faust
8 asserts that these actions violate her free speech rights and right to peacefully assemble.
9 Dkt. 3 at 8. Faust seeks declaratory and injunctive relief and damages of \$50,000 per
10 year, pro-rated to the time her rights have been restricted. *Id.* at 7–8.

11 On May 5, 2020, Faust filed the instant motion for TRO seeking both specific and
12 general relief. Dkt. 10. Generally, Faust seeks an injunction enjoining Defendants from
13 (1) enforcing Governor Inslee’s proclamations, including all extensions and permutations
14 thereof; (2) prohibiting persons from leaving home, traveling, peacefully assembling,
15 attending or hosting social events, and similar events; (3) restricting public transportation,
16 which Faust relies upon to travel; and (4) prohibiting the closure of rental facilities. Dkt.
17 10-1, ¶ A–C. Specifically, Faust asserts that “[a] gathering of one, just isn’t any fun” and
18 requests that the Court enjoin Defendants to permit her to “hold a protest rally at the State
19 Capital, outdoors, on June 8, 2020.” *Id.* at 4. Faust concedes that “she has not
20 submitted” a permit request for her intended rally. *Id.* at 5, ¶ 5.

1 On May 12, 2020, Defendants responded and opposed the motion on numerous
2 grounds, including standing, ripeness, and failure to exhaust administrative remedies.
3 Dkt. 20. On May 14, 2020, Faust replied

4 II. DISCUSSION

5 A party requesting preliminary relief “must establish that [she] is likely to succeed
6 on the merits, that [she] is likely to suffer irreparable harm in the absence of preliminary
7 relief, that the balance of equities tips in [her] favor, and that an injunction is in the public
8 interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

9 In this case, Defendants argue that the Court should deny Faust’s motion because
10 she lacks standing, her claims are not ripe, and she has failed to exhaust her
11 administrative remedies. Dkt. 20 at 15–19. The Court agrees with Defendants on all
12 three issues. First, Faust concedes that she has not filed an application for her intended
13 June 8, 2020 rally at the State Capital. Without an actual denial of a permit application
14 and appeal, Faust fails to establish any actual injury and violation of a constitutional
15 right. Defendants concede that citizens may enjoy public lands as long as they maintain
16 six feet between individuals outside the citizen’s immediate household. If Faust’s idea of
17 recreating on public lands involves protesting at the State Capital, then it seems like she
18 could as long as the land is open to the public and she follows the physical distancing
19 requirements. However, unless and until Faust seeks a permit and Defendants provide
20 her actual reasons why her permit is rejected, the Court has nothing to review.

21 Second, Faust generally challenges numerous aspects of Governor Inslee’s
22 proclamations. Faust’s alleged harms, however, “amount to no more than a ‘generalized

1 grievance' shared in substantially equal measure by . . . a large class of citizens, and thus
2 do not warrant the exercise of jurisdiction." *San Diego Cty. Gun Rights Comm. v. Reno*,
3 98 F.3d 1121, 1131–32 (9th Cir. 1996) (internal quotations omitted).

4 Third, in this pre-enforcement action, Faust fails to "demonstrate a realistic danger
5 of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt*
6 *v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (citing *O'Shea v.*
7 *Littleton*, 414 U.S. 488, 494 (1974)). Faust fails to establish a realistic threat of any
8 criminal enforcement action as a result of her course of conduct. Faust only has "plans to
9 reassemble." Dkt. 23 at 4. Such generic assertions do not meet the prerequisites for
10 seeking redress. Therefore, the Court denies Faust's motion because she has failed to
11 establish that she is likely to succeed on the merits of her claims or that she will suffer
12 irreparable harm in the absence of preliminary relief.

13 III. ORDER

14 Therefore, it is hereby **ORDERED** that Faust's motion for a TRO, Dkt. 10, is
15 **DENIED**.

16 Dated this 20th day of May, 2020.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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